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July 11, 2008

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Portals II, Room TW-A325
Washington, DC 20554

Re: Response to July 3, 2008 Ex Parte Filing of the Coalition of Concerned Utilities—WC Docket No. 07-245 (Pole Attachment NPRM)

Dear Ms. Dortch:

I am writing on behalf of my client, the Arkansas Cable Telecommunications Association (“The ACTA”), to correct certain statements apparently made by the Coalition of Concerned Utilities (“Coalition”) during meetings with Commission Staff on July 2 that were memorialized in the Coalition’s July 3, 2008 Ex Parte letter following those meetings.

Specifically, the Coalition has erroneously used the Declaration of Dennis R. Krumbliis, Vice President of Engineering for Buford Media Group, LLC, (“Buford”) that was filed in an on-going pole attachment rulemaking proceeding in Arkansas¹ to argue that “unfair pole attachment fees” do not have a significant impact on rural broadband deployment, and that the capital costs associated with head-end electronics and upgrades are the major barriers.² While it is true that the capital

¹ *In the Matter of A Rulemaking Proceeding To Establish Pole Attachment Rules in Accordance with Act 740 of 2007*, Arkansas Public Utility Commission, Docket No. 08-073-R, Initial Comments of The Arkansas Cable Telecommunications Association, Exhibit D (filed May 13, 2008).

² Notice of Written and Oral Ex Parte Communication – WC Docket No. 07-245 (Pole Attachment NPRM), to Ms. Marlene H. Dortch, Secretary, from Messrs Jack Richards and Thomas B. Magee, Keller and Heckman LLP, dated July 3, 2008, at p. 2. It is also important to note that although Buford averages 2 to 3 poles per customer throughout all its systems, in the system referred to in his

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costs associated with rural broadband deployment are high, those one-time costs can be capitalized and do not recur. Annual pole attachment fees, on the other hand, are recurring, annual operating costs that must be paid out of customer revenue and cannot be capitalized. Indeed, the pole attachment rate increases that Mr. Krumblis expects in Arkansas, including the increase from \$6.00 to \$15.84 per attachment in the system referred to in his Declaration, will not only have a significant impact on Buford's decision to deploy broadband in certain systems in the first place, but may force Buford to shut down entire systems altogether, as Mr. Krumblis explained during the June 10th hearing in the Arkansas Public Service Commission's pole attachment rulemaking proceeding:

I would like to respond to the co-ops assertion that pole rates do not hinder delivery in rural markets. The statements they made on page 21 and 22 of their comments and the statements that were made here today regarding pole rate increases and the impact of their delivery of broadband in rural systems, specifically mine, are just plain wrong.

The main reason being is that pole rental rates are yearly re-occurring fees and it's not a one-time cost that we can capitalize and put into a project upgrade. So as a result, as much as I would like to, my accounting department will not let me put pole rental fees in under capital expense. It comes out of a yearly operating expense. Those fees are paid out of the yearly operating expense from the customer revenue.

In the particular case that I'm talking about, particularly a case that has been cited here with the co-ops, when I go from a \$6 per pole rate to the new rate of \$15.84, and if I couple that with going from 2500 attachments to what they say are 4900 attachments, my rate goes from an annual rate of \$15,000, or 8 percent of my revenue in that system, to \$77,111, or 48 percent of the annual revenue that that system generates.

Now, with that being said, I'm faced not only with the prospect of probably not being able to deliver broadband[s] [sic] in that system, but with 48 per cent of my revenue going just to pole rental alone, I

Declaration where the rent will rise from \$6.00 to more than \$15.00 per attachment, the average is approximately 8 poles per customer, according to Mr. Krumblis.

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will probably be faced in this system and other systems as those rates increase and just turning those systems off all together.³

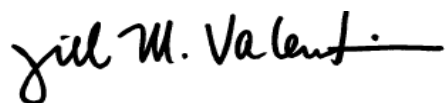
Although the Coalition made the exact same mistaken representations to the Commission in June meetings with Wireline Competition Bureau Staff *before* Mr. Krumbli testified in the Arkansas pole attachment hearing,⁴ ACTA is surprised and dismayed that the Coalition continues to misuse Mr. Krumbli's Declaration *after* the hearing, in which the same attorneys representing the Coalition at the FCC participated on behalf of the Arkansas Electric Cooperative Corporation and the Electric Cooperatives at the Arkansas PSC.⁵

The ACTA is hopeful that this letter has clarified that higher pole attachment rates will indeed have a significant impact on the ability of cable operators, including Buford, to deploy broadband in rural areas and may also result in forcing operators to shut down existing video systems.

Please do not hesitate to contact the undersigned if you have any questions or would like additional information.

Very truly yours,

Davis Wright Tremaine LLP



Jill Valenstein

Enclosure(1)

cc: (Hand Delivery)

Amy Bender
 Scott Bergman
 Scott Duetchman
 John Hunter

³ *In the Matter of A Rulemaking Proceeding To Establish Pole Attachment Rules in Accordance with Act 740 of 2007, Arkansas Public Utility Commission*, Docket No. 08-073-R, Hearing Before Arthur H. Stuenkel, Administrative Law Judge, Volume III, pp. 18-19, attached hereto as Exhibit A.

⁴ Notice of Written and Oral Ex Parte Communication – WC Docket No. 07-245 (Pole Attachment NPRM), to Ms. Marlene H. Dortch, Secretary, from Messrs Jack Richards and Thomas B. Magee, Keller and Heckman LLP, dated June 5, 2008.

⁵ See Exhibit A, at p. 4 (setting forth appearances, including for the Arkansas Electric Cooperative Corporation and the Electric Cooperatives).

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Richard Kwiatkowski
Al Lewis
Hannah Anderson
Marv Sacks
Jonathan Reel
Mark Brook
Jesse Skinner
Matt Warner
Jeremy Miller
Randy Clarke

EXHIBIT A

BEFORE THE ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF A RULEMAKING) DOCKET NO. 08-073-R
 PROCEEDING TO ESTABLISH POLE)
 ATTACHMENT RULES IN ACCORDANCE) HEARING PURSUANT
 TO
 WITH ACT 740 OF 2007) ORDER NO. 1

HEARING BEFORE:

ARTHUR H. STUENKEL, Administrative Law Judge

V O L U M E I I I

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THE ABOVE-STYLED MATTER was reported by
 Michael Nelson, Certified Court Reporter
 No. 426, taken at the Arkansas Public Service
 Commission, Hearing Room No. 1, 1000 Center
 Street, Little Rock, Arkansas, commencing on

the 10th day of June, 2008, at 9:30 a.m.

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Cindy Ireland 62 86 118

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For Windstream Communications:

Kerry Smith 388

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Gene Davis 447 450

Bill Tyler 447 450

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For ACTA:

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Garland Dunlap 583 601

Ed Fairchild 583 601

Jeff Gould 583 601

Michael Harrelson 583 601

Patricia Kravtin 583 601

Dennis Krumbliis 583 601

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For Electric Cooperatives:

Wil Arnett 699 732

Jonathan Joyce 699 732

Troy Scarbrough 699 732

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(Reply Comments p. 646 thru p. 698)

REPORTER CERTIFICATE:

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* Note that witnesses were presented in panel format.

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VOLUME I			
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ACTA Reply Ex. A(579)	61	61	61
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ACTA Reply Ex. C(624)	61	61	61
ACTA Reply Ex. D(633)	61	61	61
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A. (Ms. Kravtin) My name is Patricia Kravtin. I'm a consulting economist based out of Boston, Massachusetts. I have over 25 years of experience in the area of telecommunications, economics, and public policy and with particular experience in the area of pole and conduit regulation.

A. (Mr. Harrelson) My name is Michael Harrelson. I'm called Mickey. I'm from McRae, Georgia. My experience is in the exciting field of electrical engineering.

A. (Mr. Gould) Jeff Gould, vice president of technical operations, Suddenlink Communications in Conway, Arkansas. I've been at this location for 25 years.

A. (Mr. Fairchild) Ed Fairchild. I'm construction manager for Cox Communications of Arkansas. I've been in the business since 1982.

Q. Thank you. Do you have reply comments in response to -- do you have rebuttal statements in response to any reply comments?

A. (Mr. Krumblis) Yes, I do. Again, Dennis Krumblis from Buford Media. I would like to respond to the co-ops assertion that pole rates do not hinder broadband delivery in rural markets. The statements that they made on page 21 and 22 of their comments and the statements

that were made here today regarding pole rate increases and the impact of their delivery of broadband in rural systems, specifically mine, are just plain wrong.

The main reason being is that pole rental rates are yearly re-occurring fees and it's not a one-time cost that we can capitalize and put into a project upgrade. So as a result, as much as I would like to, my accounting department will not let me put pole rental fees in under capital expense. It comes out of a yearly operating expense. Those fees are paid out of the yearly operating expenses from the customer revenue.

In the particular case that I'm talking about, particularly a case that has been cited here with the co-ops, when I go from a \$6 per pole rate to the new rate of \$15.84, and if I couple that with going from 2500 attachments to what they say are 4900 attachments, my rate goes from an annual rate of \$15,000, or 8 percent of my revenue in that system, to \$77,111, or 48 percent of the annual revenue that that system generates.

Now, with that being said, I'm faced not only with the prospect of probably not being able to deliver broadbands in that system, but with 48 percent of my revenue going just to pole rental alone, I will probably be faced in this system and other systems as those rates

increase and just turning that system off all together.

Thank you.

Q. Any other rebuttal?